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May 20, 2002 **RECEIVED**

MAY 20 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: MB Docket No. 02-73; RM-5742; RM-10400;
Counterproposal to Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations (Cameron, Arizona)**

Dear Ms. Dortch:

Transmitted herewith on behalf of Arizona Radio Partners, LCC the assignee of FM Station KVNA-FM, Flagstaff, Arizona, is an original and four copies of a Counterproposal in the above-referenced proceeding. This filing is respectfully directed to the Chief, Allocations Branch.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

John F. Garziglia

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|--------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MB Docket No. 02-73 |
| Table of Allotments, |) | RM-10400 |
| FM Broadcast Station. |) | |
| |) | |
| Cameron, Arizona |) | |

To: Chief, Allocations Branch

COUNTERPROPOSAL

Arizona Radio Partners, LLC ("Arizona Radio"), the proposed assignee of KVNA (FM), Channel 248C, Flagstaff, Arizona¹, by its attorneys, pursuant to Notice of Proposed Rule Making, MB Docket No. 02-73, RM-10400, DA 02-737, released March 29, 2002 ("NPRM"), hereby submits its counterproposal in the above-referenced proceeding. In support whereof, the following is respectfully submitted²:

Introduction

1. In response to a Petition for Rule Making filed by McCody Broadcasting Group, Inc. ("Petitioner"), the Commission released the NPRM proposing the following allotment plan ("Petitioner's Allotment Plan"):

- allotment of Channel 246A to Cameron, Arizona, as that community's first local aural service;

^{1/} Arizona Radio is the proposed assignee of KVNA (FM) pursuant to FCC consent granted December 6, 2001 in FCC File No. BAL-20011026AAM.

^{2/} The NPRM established May 20, 2002 as the deadline for filing comments and counterproposals. Accordingly, the instant counterproposal is timely filed.

Counterproposal

2. In lieu of Petitioner's Allotment Plan, Arizona Radio proposes the following allotment plan ("Counterproposal"):

- substitution of Channel 289A for proposed Channel 246A at Cameron, Arizona;
- allotment of Channel 247C to First Mesa, Arizona as a new allotment providing first local service;
- reallocation of Channel 248C from Flagstaff to Dewey-Humboldt, Arizona and the modification of the KVNA (FM) license to specify operation on Channel 248C at Dewey-Humboldt, Arizona;
- substitution of Channel 252 for either proposed Channels 247C3 or 248B1 for a new service at Parker, Arizona;
- substitution of Channel 269C3 for the vacant allotment Channel 246C3 at Bagdad, Arizona;
- modification of the facilities of KRXS-FM now on Channel 247C2 to specify operation on Channel 231C2 at its present site serving Globe, Arizona;
- modification of the facilities of KXKQ(FM) now on Channel 231C1 to specify operation on Channel 232C2 at a new site continuing to serve Safford, Arizona;

3. This Counterproposal will result in first local service to two Arizona communities and a second reception service to an additional population. There is no population that would be underserved as a result of implementation of this Counterproposal. Only two of the substitutions require involuntary channel changes of existing stations.

Individual Components of the Counterproposal

I. Channel 289A Should Be Substituted for Proposed Channel 246A at Cameron, Arizona

4. The allotment at Cameron, Arizona is the subject of a Notice of Proposed Rule

Making first released on March 29, 2002.³ While the petitioner in that proceeding has requested Channel 246A, the allotment of that channel is mutually exclusive with Arizona Radio's present request for Channel 247C at First Mesa, Arizona.

5. Cameron is a Census Designated Place ("CDP") with 2000 Census population of 978 persons. First Mesa, Arizona is also a CDP but with 2000 Census population of 1,124 persons, some 16% greater than that of Cameron. In a mutually exclusive allotment situation, the greater population of First Mesa would tend to weigh in favor of adoption of the proposed First Mesa allotment. However, this Counterproposal proposed that the Commission instead allot Channel 289A at the coordinates used in the Cameron NPRM, thus providing for service to both communities.⁴ The proposed substitution conforms with all Commission spacing requirements, and would appear to meet all coverage requirements.⁵

II. Channel 247C Should Be Allotted to First Mesa, Arizona as a New Allotment

6. Arizona Radio further requests the allotment of Channel 247C to First Mesa, Arizona.⁶ By allotting Channel 247C to First Mesa, Arizona, more than 63,000 persons are predicted to receive an additional full time reception service.⁷ As highlighted by the Technical Narrative, this new allotment would represent the second full time reception service ("gray area") to over 4,400 individuals in the communities surrounding First Mesa.⁸ Arizona Radio Partners will file an application for the new channel at First Mesa when allotted, and upon grant of its application, will promptly build the proposed facilities.

7. First Mesa, Arizona is a community for allotment purposes. First Mesa is a CDP

³ See MB Docket No. 02-3, RM-10400 ("Cameron NPRM").

⁴ Should the Commission decline to accept Channel 289A as a substitution, it appears that 238A or 241A would also meet the requirements of §73.207 at the requested site. See Technical Narrative at 1, and Exhibit C1

⁵ *Id.*

⁶ Proposed reference coordinates are at coordinates 35-41-09 North Latitude and 110-21-43 West Longitude.

⁷ See Technical Narrative at 1, and Exhibit F2 (coverage map for First Mesa, Arizona).

⁸ See Technical Narrative at 1, and Exhibit F3 (detail of Gray Area at First Mesa).

with 1,124 persons (2000 U.S. Census). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 100 (1982) (requirement of an allotment to a community is generally satisfied if the community is either incorporated or listed in the U.S. Census).

8. The proposed allotment of Channel 247C is in full compliance with §73.207 spacing requirements with two exceptions – the present allocation of 248C, which is occupied by KVNA at Flagstaff, Arizona; and the vacant allotment of Channel 246C3 at Bagdad, Arizona.⁹ However, these short spacings are eliminated by subsequent changes requested by this Counterproposal.

III. Channel 248C Should Be Reallotted From Flagstaff to Dewey-Humboldt, Arizona to Provide a First Local Aural Service

9. Arizona Radio – as party to the application to assign the licensee of KVNA-FM, which operates on Channel 248C allotted to Flagstaff, Arizona – proposes to move the station's facilities to provide a first local radio service to Dewey-Humboldt, Arizona.¹⁰ The reallotment of Channel 248C from Flagstaff, Arizona to Dewey-Humboldt, Arizona is clearly in the public interest. It not only results in a first local service to Dewey-Humboldt, but in a coverage increase of some 1,783,000 persons in an area of 19,630 square kilometers.¹¹

10. Dewey-Humboldt, Arizona is a community for allotment purposes. Dewey-Humboldt is a CDP with 6,295 persons (2000 U.S. Census). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 100 (1982) (requirement of an allotment to a community is generally satisfied if the community is either incorporated or listed in the U.S. Census).

11. This move also eliminates the short spacing to the proposed First Mesa, Arizona allocation discussed in paragraph 6 above. While that short spacing is eliminated, this move

⁹ See Exhibit F1.

¹⁰ By the terms of the Asset Purchase Agreement filed as part of the FCC Form 314 Application for Assignment of License, Yavapai Broadcasting Corporation has authorized Arizona Radio Partners, LLC, as approved assignee, to file this Counterproposal on its behalf. Proposed reference site coordinates are 34-14-42 North Latitude 112-21-27 West Longitude.

¹¹ See Technical Narrative at 2, and Exhibit D5.

then creates an additional short spacings three vacant or proposed allotments, and one short spacing to an occupied allotment.¹²

12. Two of the short spacings involve proposed allocations to Parker, Arizona, arising from a pending proceeding.¹³ Another short spacing is created by a vacant allotment at Bagdad, Arizona. The last of these short-spacings is to the allotment occupied by station KRXS-FM at Globe, Arizona. All of these short spacings may be eliminated by subsequent simple changes to the Table of Allotments as outlined below.

IV. Channel 252 Should Be Substituted for Either of the Proposed Channels 247C3 or 248B1 at Parker, Arizona

13. Arizona Radio submits that Channel 252 may be easily substituted for either of the channels currently being proposed in the rule making considering a new allotment to Parker, Arizona.¹⁴ In Docket 01-69, which is cut off from further comment, Channels 247C3 and 248B1 were both proposed for Parker, Arizona.¹⁵ While Channel 248C at Dewey-Humboldt is short spaced to only the Channel 248B1 proposal, Channel 252 can be substituted for either proposed allotment at the sites proposed in the respective petitions.¹⁶ The proposed allotments, which are separated by only 22.46 km, are presumably mutually exclusive.¹⁷ Thus, substitution of Channel 252 at Parker, Arizona not only resolves a short spacing to the Dewey-Humboldt proposal, it would do so in a way that allows easy resolution of the pending Parker rule making.

V. Channel 269C3 Should Be Substituted for the Vacant Allotment Channel 246C3 at Bagdad, Arizona

14. The present Channel 246C3 allotment reference site for Bagdad, Arizona is short

¹² See Exhibit D1 (Channel study for 248C at Dewey-Humboldt)

¹³ See Parker, Arizona *Notice of Proposed Rulemaking*, MM Docket No. 01-69, RM-10081 (released March 16, 2001).

¹⁴ *Id.*; see also Technical Narrative at 3.

¹⁵ *Id.*

¹⁶ See Exhibits P1 and P2 (channel studies for 247C3 and 248B1, respectively).

¹⁷ See §73.207 (which requires a separation of at least 114 km), see also Technical Narrative at 3.

spaced to both the allotment of Channel 247C at First Mesa, Arizona and the proposed reallocation of Channel 248C to Dewey-Humboldt, Arizona. This Counterproposal thus offers Channel 269C3 as a substitute for the current vacant allocation for Bagdad, Arizona.¹⁸

15. The proposed Bagdad channel substitution meets the spacing requirements of §73.207, with a lone exception to the Channel 225C allotment at Flagstaff, Arizona, which is addressed by the section that follows.

VI. The Facilities Of KRXS-FM Now On Channel 247C2 Should Be Modified To Specify Operation On Channel 231C2 At Its Present Site Serving Globe, Arizona

16. Arizona Radio next proposes that, in order to accommodate the move of KVNA-FM as described above, the Commission issue an Order to Show Cause as to why the license of KRXS-FM should not be modified to specify operation on Channel 231C2 at its present site serving Globe, Arizona. Since the modification only involves a channel change, and no relocation, there will be no loss or interruption of service. Such a modification would plainly serve the public interest in that it eliminates the final short spacing that stands in the way of this counterproposal which will result in additional service to over 1.7 million listeners.¹⁹

17. Arizona Radio acknowledges its obligation to reimburse the licensee of KRXS-FM, Linda C. Potyka, Arizona for its reasonable costs, both technical and promotional, incurred in changing frequencies, should the Commission adopt this counterproposal, under the Commission's guidelines set forth in Circleville and Columbus, Ohio, 8 FCC Rcd 159 (1967). In Circleville, the Commission held that reimbursement is proper for: (i) engineering, legal and equipment charges; (ii) printing (logs and stationery); (iii) out of pocket nonreducible expenses while the station is off the air; (iv) advertising promotion for the new frequency; and (e) miscellaneous expenses. The licensee is not entitled to reimbursement of costs attributable for voluntary changes such as upgrading the station's equipment, or to costs for excessive

¹⁸ See Technical Narrative at 3-4.

¹⁹ See para 25, *infra*.

promotional or advertising activities not reasonably required by the frequency change. Parties are expected to reach a reasonable and equitable agreement in an expeditious manner. It is not the Commission's policy to mediate, at the outset, claims to establish the amount of reimbursement. It is understood that the Commission will do so only as a last resort.²⁰

18. Channel 231C2 can be substituted for Channel 247C2 at the present KRXS-FM site in full compliance with §73.207 except for two apparent short spacings. However, one of these short-spacings does not likely exist, and the other is addressed through further changes to the Table of Allotments discussed later in the Counterproposal.

19. One short spacing appears to involve a Mexican Channel 231B1 allotment at Sonoita, SO, Mexico.²¹ KRXS-FM is already short spaced to another Mexican allotment on Channel 247B at Sonoita, SO, MX which appears to have reference coordinates identical to the Channel 231B1 allotment. As both the present KRXS-FM Channel 247C2 and the proposed replacement Channel 231C2 are subject to identical co-channel short spacings to the Sonoita allotments, Arizona Radio presumes the channels equivalent and thus suitable for substitution.²²

20. However, Arizona Radio's engineer has discovered that the reference sites for both of the Mexican allotments at Sonoita, SO, MX are actually located *within* the United States. This has been confirmed by a professional surveyor, who has mapped the coordinates and certified that the reference points described are, in fact, located north of the United States-Mexico border.²³ This is described further in the Technical Narrative, at pages 5 to 6.

21. Arizona Radio, however, assumes that an error is involved in this situation. Unfortunately, Arizona Radio has thus far been unable to discern the correct reference coordinates, and is left to suppose only that the allotment reference coordinates are not actually

²⁰ See, e.g., Harold A. Jahnke, 46 RR 2d 659 (1979), Mayfield and Wickliff, Kentucky, 48 RR 2d 1232 (1981). See also Red Oak, Iowa and Mayville, Missouri, 39 RR 2d 111 (1979).

²¹ See Exhibit G1.

²² See Exhibit G1 (channel study for 231C2).

²³ See Exhibit G2 (attached letter and map from Rick Engineering of Tucson, Arizona).

within the United States. As explained in the Technical Narrative, if the community coordinates for city of Sonoita are treated as the reference coordinates, the proposed channel substitution is clear by 10 kilometers.²⁴ However, as the Technical Narrative explains, “all that can be assumed is that the reference site is South of the US-Mexico border, then the Surveyor’s statement that the reference is “...approximately 1.4 miles North of the US Mexican border...” or 2 KM inside the US border.”²⁵ At the United States-Mexico border, the apparent short spacing is only 1.48 kilometers, thus reducing the likelihood of there being any actual short spacing if the allocation is presumed to be at any point even slightly South of the border.²⁶

22. Furthermore, even with a hypothetical a full Class B facility at the almost certainly erroneous north-of-the-border reference site for Sonoita, SO, MX there is no predicted interference overlap to KRXS-FM’s proposed modified facilities.²⁷ Thus, Arizona Radio proposes that the Commission may make such an allocation without disrupting any station’s operations.

23. Assuming, then, that the Mexican reference coordinates are actually located in Mexico, the proposed Channel 231C2 allocation is actually short spaced to only one facility-KXKQ-FM operating on Channel 231C1 at Safford, Arizona. This remaining short spacing may be eliminated by the modifications described in the next paragraph.

VII. The Commission Should Allow the Facilities of KXKQ(FM) To Be Modified to Specify Operation on Channel 232C2 at a New Site Continuing to Serve Safford, Arizona

24. McMurray Communications, Inc, the licensee of KXKQ(FM), Safford, Arizona has agreed to seek a channel change and downgrade from its present Channel 231C1 to Channel 232C2 at new facilities further to the north of its present location.²⁸ Such a move is predicted to

²⁴ See Technical Narrative at 5.

²⁵ See Technical Narrative at 6.

²⁶ See Technical Narrative at 6.

²⁷ See Technical Narrative at 5.

²⁸ See attached Consent Statement of McMurray Communications, Inc.

provide improved coverage to Safford, and the proposed facilities on will be in full compliance with the requirements of §73.207.²⁹

Summary of Public Interest Benefits

25. As the foregoing demonstrates, the net result of this Counterproposal is the provision of first local service to two Arizona communities and second reception service to an additional population. The following table may be found in the Technical Narrative at 6, and demonstrates the clear public interest benefit the Commission may create by adopting this counterproposal, which brings new or additional service to a massive number of listeners in Arizona.

Population Gain - Loss

| Allotment | Community | Present | Proposed | Gain/Loss |
|-------------|----------------|---------|-----------|-----------|
| 248C | Dewey-Humboldt | 176,693 | 1,960,057 | 1,783,364 |
| 246C3/269C3 | Bagdad, AZ | 2,148 | 2,238 | 90 |
| 231C1/233C2 | Safford, AZ | 48,961 | 36,189 | -12,772 |

Cumulative Gain 1,770,682

There are no individuals that would be left underserved as a result of the implementation of the Counterproposal.

26. The sum of the actions outlined by Arizona Radio's counterproposal would result in a preferential arrangement of allotments over that proposed by the Petitioner's Allotment Plan, pursuant to Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982); Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989). The reallocation of Channel

²⁹ See Technical Narrative at 6, and Exhibit S1.

248C from Flagstaff to Dewey-Humboldt would provide Dewey-Humboldt, Arizona with its first local service (fulfilling the Commission's third priority for FM allocations), while Flagstaff, Arizona would continue to receive local service from several stations.³⁰ The allocation of Channel 247C to First Mesa, Arizona is will provide first local service. Further, the First Mesa allocation is predicted to provide 63,294 persons with additional full time reception service,³¹ and will represent only the second full time reception service ("gray area") to over 4000 individuals in the communities surrounding First Mesa.³² This could all be accomplished *in addition to* the provision of first local service to Cameron, Arizona that Petitioner is proposing, thus meeting the Commission's second and third allotment priorities.³³ Clearly, the objectives of 47 U.S.C. §307(b) would be served by adopting Arizona Radio's mutually exclusive Counterproposal rather than Petitioner's Allotment Plan.

Conclusion

27. Therefore, Arizona Radio requests that the FM Table of Allotments be amended as follows:

| <u>Community</u> | <u>Present Channel</u> | <u>Proposed Channel</u> |
|--------------------|----------------------------------|----------------------------|
| Cameron, AZ | - - - | 289A |
| First Mesa, AZ | 284C, 227C | 247C, 284C, 227C |
| Flagstaff, AZ | 248C, 225C, 279C3 230C, 261C2 | 225C, 279C3, 230C 261C2 |
| Dewey-Humboldt, AZ | - - - | 248C |

³⁰ See Technical Narrative at 2, and Exhibit D4 (remaining services study).

³¹ See Technical Narrative at 1-2, and Exhibit F2 (coverage map for First Mesa, Arizona).

³² See Technical Narrative at 2, and Exhibit F3 (key to Gray Area detail).

³³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) other public interest matters [co-equal weight given to priorities (2) and (3)].


| | | |
|-------------|--------------|-------------------|
| Parker, AZ | 230C2, 257C2 | 252, 230C2, 257C2 |
| Bagdad, AZ | 246C3, 276C3 | 269C3, 276C3 |
| Globe, AZ | 262C, 247C2 | 231C2, 262C |
| Safford, AZ | 231C1 | 232C2 |

28. Arizona Radio hereby asserts its intention to reimburse the licensees of KRXS-FM as described above, should the Commission agree to modified the license as request. Arizona Radio further asserts that the licensee of KVNA-FM will file an application to effect the the community of license change as described above, should the Commission accept this Counterproposal.

WHEREFORE, for the reasons above,

Respectfully submitted,

ARIZONA RADIO PARTNERS, LLC.

By: 
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